

1 20 Q Why not just present them the pages?

2 21 A Because I want them to be able to view them and  
3 22 not expect there to be a question after the initial  
4 23 viewing. I made a judgment call. Here's what I'm going  
5 24 to show you. And then I'm going to show them.

6 25 Q Is that the way, in fact, that people who

7 Page 126

8 1 actually travel to the DMV.ORG website are instructed  
9 2 when they enter the site?

10 3 A No.

11 4 Q Aren't you obligated as a survey expert to  
12 5 attempt to emulate the real world environment as closely  
13 6 as possible when conducting a survey when doing a  
14 7 consumer perception?

15 8 A Yes. But --

16 9 Q Yes. Say yes, sir, please?

17 10 A Yes, sir.

18 11 Q So it is what you attempt to do?

19 12 A Yes.

20

21 **Counter-Designation by Defendants**

22 (126:13 -- 127:3)

23 Page 126

24 13 Q This particular instruction is not consistent  
25 14 with the real world that anyone enters the DMV.ORG  
26 15 website in, is it?

27 16 A We spoke earlier today about the fact that there

28

1 17 are many ways into the website, that I believe I was told  
2 18 that on average four or five pages of this website are  
3 19 viewed. I chose to present four pages in this survey. I  
4 20 chose to alert the respondent that there would be more  
5 21 than one page that they intended to look at before  
6 22 questioning began, and I did that.

7 23 Q Okay.

8 24 A I replicated the marketplace with respect, as  
9 25 best I could, to the pages they would view and the order  
10 Page 127

11 1 in which a rational person could view them. I also chose  
12 2 as a researcher to alert the respondents in this survey  
13 3 that they would be viewing more than one page before I

14  
15 **Grounds for counter-designation:**

16 Completeness, Fed. Rule Evid. 106.

17  
18 **1.7. Testimony offered by Plaintiffs**

19 **(129:4-22)**

20 Page 129

21 4 Q So the only thing you tested so far in this  
22 5 deposition as I can understand it is that person who  
23 6 navigates through those four consecutive pages; is that  
24 7 correct?

25 8 A Actually, I navigated for them. I presented all  
26 9 respondents with four different pages seriatim.

27 10 Q Always presented in the same order, correct?

28

1 11 A Correct.

2 12 Q So would you agree with me that what you solely  
3 13 tested was the perception in your view of someone who  
4 14 navigated through those exact same four pages and then  
5 15 tested them after they had seen all four; is that  
6 16 correct?

7 17 A I certainly tested them after they had seen all  
8 18 four.

9 19 Q Okay. And you didn't test their perception of  
10 20 any particular point in that process, just at the end of  
11 21 it, correct?

12 22 A Correct.

13

14 **Counter-Designation by Defendants**

15 **(129:23 -- 130:1)**

16 Page 129

17 23 Q Why not?

18 24 A Because I wished to give them as much or as  
19 25 little time, as much or as little exposure to the DMV.ORG

20 Page 130

21 1 as I deemed appropriate to the issue at hand.

22

23

24

25 **Grounds for counter-designation:**

26 Completeness, Fed. Rule Evid. 106.

27

28

1 **1.8. Testimony offered by Plaintiffs**

2 **(151:3-20)**

3 Page 151

4 3 Q Why did you move the viewer to what we are going  
5 4 to mark as Exhibit 187, which is the next screen?

6 5 (Deposition Exhibit 187 was marked for  
7 6 identification by the court reporter.)

8 7 A It was the fourth stimulus that everybody saw.

9 8 Q So at the time just prior to opening the fourth  
10 9 stimuli, you don't know what the state of mind of the  
11 10 consuming public was that you tested, do you?

12 11 A Correct, I do not.

13 12 Q Okay. And you don't know if this particular  
14 13 image impacted their view one way or the other, caused  
15 14 them to change their mind or differentiate their view, do  
16 15 you?

17 16 A That feels like a lot of questions, Counselor.

18 17 Q You don't know one way or the other whether this  
19 18 fourth stimuli changed the point of view in any respect  
20 19 in any of respondents; is that correct?

21 20 A That is correct.

22  
23 **Counter-Designation by Defendants**

24 **(151:21-23)**

25 Page 151

26 21 Q Why did you put that on there?

27 22 A Because it's the last place you go before  
28

1 23 spending money.

2  
3 **Grounds for counter-designation:**

4 Completeness, Fed. Rule Evid. 106.

5  
6 **1.9. Testimony offered by Plaintiffs**

7 **(184:21-25)**

8 Page 184

9 21 Q We didn't go over endorsement or sponsorship.

10 22 Would you agree that you did not test the

11 23 beliefs of the public as to the ownership, sponsorship or

12 24 endorsement of the DMV.ORG website?

13 25 A That is correct.

14  
15 **Counter-Designation by Defendants**

16 **(185:1-22)**

17 Page 185

18 1 Q No. 2, you separate out endorsement or

19 2 sponsorship, and I'm still not clear about why those were

20 3 funneled out or separated out from the affiliation group.

21 4 You separated No. 2 from No. 1 and didn't let the same

22 5 people answer both.

23 6 A Because they have already told me that there is

24 7 some kind of connection between entities.

25 8 Q Okay. What does endorsement mean as used in

26 9 your survey?

27 10 A What am I intending to communicate? Is that

1 11 what you mean by that question?

2 12 Q Well, what does endorsed mean as used in the

3 13 survey question 2 that you designed?

4 14 A That one entity has given another some official

5 15 imprimatur, some cache of their name.

6 16 Q Their name?

7 17 A Their entity.

8 18 Q I see. What does sponsored by anyone mean as

9 19 used in your question No. 2?

10 20 A Joe's Bar and Grill sponsors the Little League

11 21 baseball team. They put money behind it. They lent

12 22 their name to it.

13

14 **Grounds for counter-designation:**

15 Completeness, Fed. Rule Evid. 106.

16

17 **1.10. Testimony offered by Plaintiffs**

18 **(197:10 -- 199:10)**

19 Page 197

20 10 Q Exhibit 194 is a single-sheet document called

21 11 "Open-end Codes."

22 12 Is that your code on this project,

23 13 Mr. Hollander?

24 14 A Yes, that is my code.

25 15 Q Let's try to look at this together. I see code

26 16 No. 1, you've combined DMV, slash, state, slash,

27 17 government. So why is it that you combined those into

28

1 18 three categories as one code instead of separate?

2 19 A Because they are all speaking to an affiliation

3 20 with an official -- with an official governmental entity.

4 21 Q Does it presume that the respondent knows what

5 22 DMV means?

6 23 A Well, DMV was on the -- DMV.ORG was on there.

7 24 Q You mean it was on the stimuli?

8 25 A Right.

9 Page 198

10 1 Q Does it presume that the respondent understands

11 2 DMV to mean Department of Motor Vehicles is a

12 3 governmental agency?

13 4 A Yes, I think that presumes.

14 5 Q Is it also possible that people combine DMV, a

15 6 nongovernmental agency, with two governmental agencies?

16 7 MR. DAUCHER: Vague.

17 8 BY MR. MAKOUS:

18 9 Q Let me repeat the question.

19 10 You've combined -- you created those three

20 11 categories, quote, DMV, close quote, quote, government,

21 12 and, quote, state, together, correct?

22 13 A I did.

23 14 Q Then you made a judgment call, as survey experts

24 15 do, in coding as to whether an open-ended response meant,

25 16 quote, DMV, or whether an open-ended response meant,

26 17 quote, state, or whether an open-ended response meant,

27 18 quote, government in regards to the affiliation question,

28

1 19 correct?

2 20 A No. The respondent would have said one of those  
3 21 three.

4 22 Q Right. But you made a decision when reading the  
5 23 open-ended responses whether they meant DMV or state or  
6 24 government in their response?

7 25 A I read it. If I saw it, I gave it a 1.

8 Page 199

9 1 Q In other words, if someone in their response  
10 2 said, who do you think this is affiliated with, they put  
11 3 DMV. Take that as a hypothetical response. How would  
12 4 you have coded that?

13 5 A One.

14 6 Q If someone gave the hypothetical response of  
15 7 state department, how would you have coded that?

16 8 A State department might have gotten "other." If  
17 9 somebody said state of California or California or  
18 10 Alabama or something, I would have given it a 1.

19

20 **AND (200:3 -- 201:10)**

21 Page 200

22 3 Q In code No. 2, it says, "All other." Code No. 3  
23 4 says "Don't know, not sure, guessing." No. 4 says  
24 5 "None." No. 5 has "GEICO, Progressive, insurance  
25 6 company." No. 6 says "DMV.ORG" and No. 7 says "CAR.ORG."

26 7 When someone answered No. 6, DMV.ORG, do you  
27 8 know if they meant state agency or not?

28



1 9 A No, sir. If they answered DMV.ORG, they got a  
2 10 6.

3 11 Q Okay. Now, why do you separate that out from  
4 12 No. 1?

5 13 A Because it's a separate response. It didn't say  
6 14 DMV. It said DMV.ORG.

7 15 Q Okay. But that doesn't mean they don't think  
8 16 it's a state agency, does it?

9 17 A Sir, I'm not capable of climbing into somebody's  
10 18 mind. I can only deal with the responses in front of me.  
11 19 If the response was DMV, period, I gave it a 1. If it  
12 20 was DMV.ORG, I gave it a 6.

13 21 Q Okay. If you went back to your data and took  
14 22 all the DMV.ORGs and combined them with No. 1, would that  
15 23 affect your opinion?

16 24 A I wouldn't do that.

17 25 Q Would that have affected your opinion?

18 Page 201

19 1 A I have no idea.

20 2 Q It would change the results, though, that you  
21 3 calculated and analyzed, correct?

22 4 A I have no idea.

23 5 Q DMV.ORG, you don't know when someone answered  
24 6 DMV.ORG, if they believe it to be a state agency or not,  
25 7 do you?

26 8 A No. All I know is I'm presented with the  
27 9 answer, quote, DMV.ORG, end quote. I gave it a separate  
28

1 10 code.

2  
3 **Counter-Designation by Defendants**

4 (201:11-20)

5 Page 201

6 11 Q But you don't know the state of mind, whether  
7 12 that respondent believed that that answer meant somebody  
8 13 affiliated with a state agency or not; is that correct?

9 14 A Well, sir, in a way I certainly do because then  
10 15 we said, "With whom is it affiliated?" And nobody said  
11 16 the DMV.ORG is affiliated with the DMV.ORG. Very few  
12 17 people said DMV.ORG is affiliated with DMV, slash, state,  
13 18 slash, government, and some people said DMV, slash,  
14 19 state, slash, government, is affiliated with DMV.ORG. I  
15 20 am able to capture that and report it.

16  
17 **Grounds for counter-designation:**

18 Completeness, Fed. Rule Evid. 106.

19  
20 **1.11. Testimony offered by Plaintiffs**

21 (228:10 -- 229:2)

22 Page 228

23 10 Q Okay. Now, if you look at the question 1-A,  
24 11 DMV, slash, state, slash, government. Look at the  
25 12 results that go across in the six columns. Would you  
26 13 agree that the results for the non-DMV states indicate a  
27 14 lower affiliation opinion than California?  
28

1 15 A I would.

2 16 Q Yet you combined those non-DMV states with  
3 17 California to formulate your opinion, didn't you?

4 18 A I did.

5 19 Q Would you agree that the numbers in the non-DMV  
6 20 states lower the total number of people in the entire  
7 21 test group and control group that found an affiliation?

8 22 A They were lower in both the test and control  
9 23 group, true.

10 24 Q When you combine them with California, would you  
11 25 agree that the net result was to lower the overall

12 Page 229

13 1 result?

14 2 A Yes. I would agree with that.

15

16 **Counter-Designation by Defendants**

17 **(229:3-16)**

18 Page 229

19 3 Q Now, does it concern you to have so many  
20 4 controls that are in excess in this chart of the test  
21 5 groups? For example, question 1-B, your control of 14.7  
22 6 exceeds 12.6 on the DMV, slash, state, slash, government  
23 7 line, meaning that the control, it's a negative. I mean,  
24 8 we have a control group that's supposedly measuring  
25 9 noise, you're assuming the entire test group and some.  
26 10 What does that mean?

27 11 A It means what I've been trying to tell you it

28

1 12 means, sir, that anything that appears on those pages  
2 13 dealing with the subject of traffic schools may, in fact,  
3 14 be thought to have some relationship, affiliations,  
4 15 sponsorship or endorsement with an official governmental  
5 16 agency. I have been saying that consistently.

6  
7 **Grounds for counter-designation:**

8 Completeness, Fed. Rule Evid. 106.  
9

10 **2. DEPONENT: ITAMAR SIMONSON**

11 **2.1. Testimony Offered by Plaintiffs**

12 **(179:10 -- 181:15)**

13 Page 179

14 10 Q. Okay. Let's go to question number 2.

15 11 There is a list of factors on the left side,  
16 12 and the question reads:

17 13 "Which of the following, if any, would  
18 14 be important in your decision as to which  
19 15 traffic school to use?"

20 16 And it has "Price", "Recommended by the DMV",  
21 17 "Convenience", "Years in business", "Materials  
22 18 provided", "Offer in-person programs", "Offer online  
23 19 programs", "Referred to by a friend or relative".

24 20 Do you see that, sir?

25 21 A. Yes.

26 22 Q. Okay. Do you have any problem with that  
27 23 question?

28 24 A. Yes.

1 25 Q. What?

2 Page 180

3 1 A. We talked earlier about the problem with  
4 2 closed-ended questions, especially those without a  
5 3 control, that they really tell us very little.

6 4 In this case, one of the answers was  
7 5 "Recommended by DMV"; putting this aside, the question  
8 6 of whether the DMV makes any recommendations about  
9 7 specific traffic schools. But you just -- you just put  
10 8 it in there.

11 9 There was little doubt that, given that it's  
12 10 there, many of the respondents would say "Yes".

13 11 The obvious solution would have been to ask  
14 12 open-ended questions, and let's see what respondents on  
15 13 their own would have said. It's quite simple.

16 14 Q. Well, what other factors would you have  
17 15 included that are not included in the question of list  
18 16 number 2?

19 17 A. I would not have included "Recommended by  
20 18 DMV". This is just a -- something that he put in  
21 19 there. I can see "Price", definitely important.  
22 20 "Convenience", important. I mean --

23 21 Q. What -- is "Years in business" important?

24 22 A. Well, you know, evidently it's important for  
25 23 some people.

26 24 Q. Based on his survey results, right?

27 25 A. Yes; but the point is that "Recommended by  
28

1 Page 181

2 1 DMV", you know, I don't want to speculate about what  
 3 2 would have happened had -- had an open-ended question  
 4 3 been used; but if you pressure me, I would say that  
 5 4 it's -- probably would have been less than 10 percent,  
 6 5 if at all. If it was mentioned by anyone.

7 6 Q. And what are you basing that on, that last  
 8 7 statement?

9 8 A. Just because I think that people would not  
 10 9 think that DMV is in the business of recommending  
 11 10 particular traffic schools.

12 11 Q. But you've not inquired as to the state of mind  
 13 12 of any consuming group in that regard, have you?

14 13 A. As I said, I haven't conducted any survey.

15 14 The bottom line is, as I said, this survey  
 16 15 provides no information.

17  
 18 **Defendants' Counter-Designation:**

19 **(181:16 -- 182:1)**

20 Page 181

21 16 Q. All right, let me ask you a question, sir: You  
 22 17 see where number 3, it says -- first of all -- withdraw  
 23 18 that.

24 19 In number 2, he says, "Yes, important"; "No,  
 25 20 not important"; "Don't know".

26 21 He gives the survey respondents an -- the  
 27 22 opportunity to say, "Absolutely not. Not important".

28 23 Correct?

1       24     A. Yeah; but you put it in front of them, and you  
2       25    make -- you cause them to think about it, that's a  
3       Page 182  
4       1    leading question 101.

5  
6    **Grounds for Counter-Designation:**


7       Completeness, Fed. Rule Evid. 106.  
8  
9

10   Dated: November 12, 2007

11                               Respectfully submitted,

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